

CHAPTER VI.

FORM OF TRIAL IN CAPITAL CASES.

A CAPITAL trial was conducted with all the solemnity of a religious ceremony. The exercise of judicial functions was at all times regarded as a sacred privilege ; and the responsibility incurred in criminal cases was ever present to the Hebrew mind. ' A judge,' says the Talmud, ' should always consider that a sword threatens him from above, and destruction yawns at his feet.' Rising betimes in the morning, the members of the Synhedrin assembled after prayers in the Hall of Justice. Pending the arrival of the culprit and the preparations for the trial, they commented among one another on the serious nature of the duties they were called upon to discharge. The judges were so arranged as

to sit in a semicircle. Immediately in front of them were three rows of disciples. Each row numbered three-and-twenty persons. Thus every judge was assisted by three juniors. These disciples were not young and inexperienced students, but were many of them in no wise inferior to the members of the court itself. Any vacancies in the first row were filled up from the second ; any required in the second were supplied from the third rank ; and the third was recruited from the number of learned men to be found in every place having a permanent Synhedrin. Three scribes were present ; one was seated on the right, one on the left, the third in the centre of the hall. The first recorded the names of the judges who voted for the acquittal of the accused, and the arguments upon which the acquittal was grounded. The second noted the names of such as decided to condemn the prisoner and the reasons upon which the conviction was based. The third kept an account of both the preceding,

so as to be able at any time to supply omissions or check inaccuracies in the memoranda of his brother reporters. The culprit was placed in a conspicuous position, where he could see everything and be seen by all. Opposite to him and in full view of the court were the witnesses. Thus constituted and arranged, the Synhedrin commenced its investigations.

The procedure in a capital trial differed in many important respects from that adhered to in ordinary cases. In an ordinary case the discussions of the judges commenced with arguments for or against the accused; in a capital charge it could only begin with an argument urged in behalf of the prisoner. In an ordinary case a majority of one was sufficient to convict; in a capital charge a majority of one could acquit, but a majority of two was necessary to condemn. In ordinary cases judgment pronounced could always be annulled upon discovery of an error; in capital cases the decision was irrevocable once the

accused had been declared innocent. In ordinary cases the disciples present could offer opinions for or against either party ; in a capital trial they were only permitted to suggest arguments in favour of the culprit. The judges in ordinary cases could change their opinion prior to giving the final and collective decision ; but in a capital charge they were only permitted to change if at first they had intended to vote for a conviction. An ordinary trial, if commenced in the morning, might be continued during the evening ; in a capital issue the proceedings must cease and the sitting be suspended at sunset. An ordinary charge could be heard and adjudicated upon in one day ; in a capital case a prisoner could be acquitted the same day as he was tried, but sentence of death could not be pronounced until the following afternoon. Lastly, in ordinary cases, the judges voted according to seniority, the oldest commencing ; in a capital trial the reverse order was followed. That the younger members of the

Synhedrin should not be influenced by the views or arguments of their more mature, more experienced colleagues, the junior judge was in these cases always the first to pronounce for or against a conviction.

As soon as the Synhedrin was ready the examination of the witnesses commenced. The first who was to give evidence was taken into an adjoining chamber and carefully admonished. He was asked if he had not perchance founded his conviction of the prisoner's guilt upon probability, on circumstantial proof, or by hearsay ; whether he was not influenced in his opinions by persons whom he regarded as trustworthy and reputable. Did he know he would be submitted to a searching and rigorous examination ? and was he acquainted with the penalty entailed by perjury ? The most venerable of the judges then addressed the witness, solemnly adjuring him to truthfulness. 'Do you know,' said the rabbin, 'the difference between a civil and a criminal case ? In the former case an error is always

reparable; restitution can always be made. But in the latter an unjust sentence can never be atoned for; and you are responsible for the blood of the condemned and all his possible descendants. For this reason God created Adam—whose posterity fills the earth—alone and sole, in order that we might understand that he who saves a single soul is as though he saved an entire world; and he who compasses the destruction of a single life is as though he had destroyed a world. That the Almighty formed but one man in the beginning is moreover intended to teach us that all men are brethren, and to prevent any individual from regarding himself as superior to a person belonging to another nation. Nevertheless,' continued the judge, 'if you witnessed the crime and conceal the facts you are culpable. Have no fear therefore of the responsibility you incur; and remember that as a city rejoiceth when the righteous succeed, so doth a town shout when they that wrought wickedness are punished.'

Upon the conclusion of this exhortation the examination commenced. The Hakiroth, questions as to time and place, were put to each of the witnesses, and subsequently the Bedikoth, inquiries relative to the commission of the crime. As soon as the answers constituting the evidence against the prisoner had been received they were submitted to the Synhedrin. The consideration of the case was thereupon proceeded with. As we before pointed out, the rebutting testimony could only be directed against the Hakiroth by proving an alibi against one or both of the witnesses. If the accused succeeded in so doing he was of course at once acquitted. If there was a marked discrepancy in the Bedikoth—sufficient, in fact, to render the statements of the witnesses contradictory—the trial equally of course immediately terminated. There would be, under the circumstances named, no evidence legally admissible; no valid testimony to lay before the Synhedrin. Supposing, however, the facts elicited from

the witnesses were such as could be brought into court in support of the charge, then the tribunal commenced the discussion preliminary to voting.

The deliberations could only begin with an argument in favour of the accused. Nothing was therefore urged until one of the judges found some fact or facts telling against the prosecution. The member of the Synhedrin then rose and, alluding to the circumstances, said : ' According to such and such a statement, it appears to me the prisoner must be acquitted.' The discussion thereupon became general. Every item of evidence was carefully overhauled ; each of the answers given by the witnesses was subjected to minute criticism. Apparent inconsistencies were dilated upon, and extenuating facts pleaded. The culprit himself was permitted to urge anything in his own favour or against the evidence of the prosecution. If a disciple found a cogent or valid argument on behalf of the prisoner, he was placed among the judges, and regarded as a

member of the court during the entire day. If, on the other hand, one of the disciples noticed anything calculated to injure the defence, he was not permitted to call attention thereto. As soon as the discussion terminated the preparations for recording the votes commenced. The scribes were ready, and each judge, beginning with the youngest, pronounced his decision for or against the accused. At the same time each stated the facts upon which his conclusion was grounded. The observations of the members were carefully recorded and preserved. As soon as the whole of the Synhedrin had voted, the numbers were announced. If eleven convicted and twelve acquitted, the prisoner was without delay discharged, a majority of one voice being sufficient for this purpose. If twelve convicted and eleven acquitted, the accused could not be condemned, a majority of at least two being required. In such a case the following expedient was adopted : two additional judges were added, these being

selected from the first row of disciples. Voting then recommenced. If a majority of two against the prisoner was thus obtained he was convicted. If not, the process of increasing by twos the number of the Synhedrin continued until the requisite preponderance was gained. Should the tribunal by this means come to consist of seventy-one members, of whom thirty-six voted for a conviction and thirty-five against, the matter was re-argued until one of the former gave way and declared in favour of an acquittal. Should the six-and-thirty adhere to their opinions the prisoner was discharged. If at the original voting thirteen members of the Synhedrin decided to convict, or if after the subsequent additions a majority of two was obtained in favour of the same course, the accused was found guilty. Sentence, however, could not be pronounced until the following afternoon. The sitting was therefore suspended until next morning.

In such cases, that is, when sentence of

death appeared inevitable, the Synhedrin adjourned immediately the majority that determined a conviction was announced. Slowly the members quitted the hall wherein the trial had been conducted. Gathering in knots of three and more, they remained for some little time in the street discussing among themselves the misfortune impending over their city—for as such all Hebrews regarded the execution of a fellow man. Gradually the groups broke up; the judges proceeded to their homes. They ate but a small quantity of food, and were not permitted to drink wine during the remainder of the day or evening. After sunset they made calls upon each other, again debating the various arguments adduced during the trial. At night each retired to his chamber and gave himself up to meditation; or so it was believed. The knowledge that a life—a life declared by their traditions to be equal to a world—depended upon their verdict would lead them to ponder upon the judgment of the morrow.

There was yet time to reconsider the sentence, time to recall a decision that a few hours would render eternally irrevocable. Rising early in the morning, they returned to the house of justice. Not one was permitted to partake of food. The day that condemned an Israelite to death was a fast-day for his judges. Meeting in the hall of assembly the members of the Synhedrin with their disciples were arranged as on the preceding morning. The witnesses were again present; the criminal was brought in. The scribes seated themselves, and the proceedings commenced. One by one each judge in succession pronounced his decision; again each repeated the arguments upon which it was based. The scribes, tablet in hand, compared the statements now made with those recorded on the previous day. If any member of the tribunal, voting for a conviction, founded his judgment upon reasoning materially opposed to that he before urged, his verdict was not accepted. One who had resolved to acquit on the pre-

ceding day was not permitted to change his determination. But any one who had decided to convict might, upon furnishing the Synhedrin with the arguments inducing him so to do, vote on this occasion in favour of an acquittal. Again the number for and against the accused was announced. Still the sentence was deferred. The prisoner might bethink himself of some valid plea in extenuation of his crime; unexpected witnesses might be forthcoming; the Synhedrin might produce some favourable arguments. Slowly the sun gained the meridian. Still the court sat; none thought of quitting the hall of judgment. Gradually the sun declined and evening drew nigh. There was to be no interval between sentence and execution; the hour that heard the doom pronounced would see it carried into effect. Sunset was the time fixed for both. As the afternoon wore on the doors of the court were opened. A man stationed himself at the gate, carrying in his hand a flag. In the distance was a horse-

man, so placed as to perceive readily the least movement or agitation of the bunting. With a solemnity becoming the occasion, the Synhedrin, after praying that they might commit no sin thereby, decreed the punishment of death. Accompanied by two rabbins, the convict was led to the place of execution without the walls. Hope was not even yet abandoned. If one of the judges bethought him of an argument in favour of the criminal the flag at the door was raised and the mounted messenger prepared for such an emergency galloped forward to stop the execution. If the culprit requested to be reconducted to the court, he was taken back as often as he furnished any valid excuse. The Synhedrin sat until the hazan—messenger of the court—returned with a notification that the condemned man was no more. Again uttering a prayer that the judgment that day pronounced might not have been in error, the members rose and silently quitted the hall of justice.

CHAPTER VII.

THE VARIOUS METHODS OF EXECUTION.

THE rabbins were the first among ancient legists to render the infliction of the death-penalty as painless as possible. The manner in which the sentence of the law in capital cases was carried into effect was regulated by a series of enactments. Every detail was preordained. The place of execution was always beyond the limits of the town ; generally at some distance from the hall where judgment had been pronounced. There were two reasons for this—first, that a certain interval of time should elapse between sentence and execution so as to permit the court to examine any evidence that might yet be forthcoming ; and, secondly, that the Synhedrin should not witness the execution. As soon

as the punishment of death was decreed, the criminal was conducted from the court. Two elders, the witnesses, and the officers of the tribunal accompanied him. In advance of the cortége walked an attendant, proclaiming aloud, 'So-and-so is to be executed for such-and-such an offence; so-and-so are the witnesses; the crime was committed at such a place, on such a day, at such an hour. If any person can urge anything against the infliction of the punishment, let him go to the Synhedrin now sitting and state his arguments.' Thus the party proceeded through the town. Arrived within six yards of the place of execution the sages who were with the condemned man pressed him to confess his crime. They told him that whosoever makes confession is privileged to share in the *olam haba*—future existence; since death was an expiation for all iniquities. If he refused to acknowledge his guilt he was asked to say, 'May my death prove an atonement for all my transgressions.' He was then conducted

to within four yards of the place where the sentence was to be carried into effect. The death-draught was here administered. This beverage was composed of myrrh and frankincense (*lebana*), in a cup of vinegar or light wine. It produced in the convict a kind of stupefaction, a semi-conscious condition of mind and body, rendering him indifferent to his fate and scarcely sensible to pain. The drink was—in Jerusalem—provided by the women, who considered this one of the greatest *mitzvoth*—meritorious deeds. In provincial towns the local communal authorities were required to furnish the criminal with the draught; the ingredients were purchased at the public expense. As soon as the culprit had partaken of the stupefying draught the execution took place.

In accordance with the Mosaic code four kinds of death were inflicted, each appropriate to a distinct series of crimes. These were stoning, strangling, burning, and decapitation. Nothing can be more absurd than

the notions generally current respecting the manner in which these punishments were carried out among the Jews. The stoning of the Bible and of the Talmud was not, as vulgarly supposed, a pell-mell casting of stones at a criminal ; the burning had nothing whatever in common with the process of consuming by fire a living person as practised by the churchmen of the Middle Ages ; nor did the strangling bear any resemblance to our English mode of putting criminals to death.

The stoning to death of the Talmud was performed as follows :—The criminal was conducted to an elevated place, divested of his attire if a man, and then hurled to the ground below. The height of the eminence from which he was thrown was always more than fifteen feet ; the higher, within certain limits, the better. The violence of the concussion caused death by dislocating the spinal cord. The elevation was not, however, to be so high as to smash or greatly disfigure the

body. This was a tender point with the Jews ; man was created in God's image, and it was not permitted to desecrate the temple shaped by Heaven's own hand. The first of the witnesses who had testified against the condemned man acted as executioner, in accordance with Deut. xvii. 7. If the convict fell face downward he was turned on his back. If he was not quite dead, a stone, so heavy as to require two persons to carry it, was taken to the top of the eminence whence he had been thrown ; the second of the witnesses then hurled the stone so as to fall upon the culprit below. This process, however, was seldom necessary ; the semi-stupefied condition of the convict and the height from which he was cast ensuring in the generality of cases instant death.

The bodies of those condemned for blasphemy or idolatry were subsequently hung upon a gallows until dusk. Immediately after execution the corpse was interred. Outside every town there were two cemeteries

for criminals—one for those sentenced to be stoned or burned ; one for those decapitated or hanged. As soon as the flesh had disappeared the skeleton could be removed to the family burying-place. A few days after an execution the friends and relatives of the dead man—he was no longer regarded as an offender—called upon the judges who had tried him. This was a tacit acknowledgment that the punishment had been justly awarded, and that those charged with the administration of the law were regarded with no revengeful feelings by the family and connections of the unfortunate man.

Death by stoning was the penalty of the following crimes : adultery of an unnatural character ; blasphemy and any form of idolatry ; public profanation of the Sabbath ; cursing parents (which must include blasphemy) ; the practice of *Ob* and *ydoni*—presumably a form of idolatrous sorcery ; criminal assault upon a Na'arah (a young girl not yet of full age—one of mature years is termed in the

Talmud *bagroth*); any person seducing another to idolatry; and a stubborn and rebellious son. Some other offences specified in the Pentateuch were also punished by stoning.

A criminal sentenced to death by burning was executed in the following manner. A shallow pit some two feet deep was dug in the ground. In this the culprit was placed standing upright. Around his legs earth was shovelled and battered firmly down until he was fixed up to his knees in the soil. Movement on the part of the condemned person was of course impossible; but care was taken that the limbs should not be painfully constrained. A strong cord was now brought, and a very soft cloth wrapped round it. This was passed once round the offender's neck. Two men then came forward; each grasped an end of the rope and pulled hard. Suffocation was immediate. As the condemned man felt the strain of the cord, and insensibility supervened, the lower jaw dropped. Into the mouth thus opened a lighted wick was quickly

thrown. This constituted the burning. After death ensued the body was buried in the cemetery for criminals. This manner of death was prescribed by an injunction of the Pentateuch for those committing adultery in certain specified cases—notably where the married daughter of a priest was found guilty of the crime.

Decapitation was performed by the Jews after the fashion of the surrounding nations. It was considered the most humiliating, the most ignominious and degrading death that any man could suffer. It was the penalty in cases of assassination and deliberate murder. It was incurred by those who wilfully and wantonly slew a fellow-man with a stone or with an implement of stone or iron. It was likewise the punishment meted out to all persons who resided in a town the inhabitants of which had allowed themselves to be seduced to idolatry and paganism.

Strangulation was a form of death by suffocation. It was effected as in burning.

The culprit stood up to his knees in loose earth. A soft cloth containing a cord was wound once round his neck. The ends being tightly pulled in opposite directions, life was soon extinct. This mode of death was the punishment of one who struck his father or his mother ; of any one stealing a fellow-Israelite ; of a false prophet ; of any one committing adultery (as we understand this crime nowadays) ; and of the elder or provincial judge who taught or acted contrary to the decision of the Great Synhedrin of Jerusalem.

It has before been said that in certain cases the bodies of malefactors were hung after execution. The reverence for the dead characteristic of the Rabbins, is nowhere more markedly apparent than in the manner in which this Mosaic ordinance was carried out. A beam was embedded endwise in the ground. From it a branch of wood projected like an arm. This extended above the place where the corpse was lying. The two hands

of the deceased were tied together, and the culprit thus suspended. According to an express injunction of the Pentateuch, the body of a criminal was not permitted to hang during the night ; it had to be removed at sunset. Now sentence was invariably pronounced towards evening, and execution immediately followed. In any case, therefore, the corpse could not have been suspended for many minutes. The Talmud however further enacted that whenever the body of a criminal was to be subjected to the indignity of exposure in this fashion two men were to undertake the duty. One was to suspend the deceased on the extemporised gallows, the other to take down the corpse ; and while the former was engaged in tying the last cord by which the malefactor was to depend from the projecting limb, the latter was to commence to unbind the first. The body was thus but a moment exposed to the indignity, and yet compliance was made with the letter of the law. Under no circumstances was the corpse.

of a criminal suffered to remain unburied until the day after death.

The *arba mithoth beth-din*—the four deaths decreed by the courts of justice—as herein described, are the only modes of execution in accordance with Hebrew law. Crucifixion, as practised by the Romans and Carthaginians, is unknown to the Scripture—equally unknown to the penal enactments of the Talmud. Horrible and unnatural punishments, such as those prescribed by the Egyptian laws in cases of parricide and seduction with violence, were unknown to the Jews. Boiling criminals alive in oil, as practised by more than one ancient nation ; burying alive, not by any means unknown to the Romans—nay, the disembowelling and quartering of our last-century executions—would have horrified a Jewish Synhedrin, who would have regarded such outrages upon the dignity of man's body as, in their own expressive phrase, a *hillul hashem*, a public desecration of the Godhead. ' We are enjoined

to love our neighbour as ourselves, says Nahman in the name of Rabbah, the son of Abouhou, 'and therefore it is our bounden duty always to endeavour to mitigate by every means possible the sufferings of a fellow-creature condemned to death.'

CHAPTER VIII.

WHAT CONSTITUTED MURDER—ADULTERY AND ITS
PUNISHMENT—IDOLATRY.

THE whole of the crimes already enumerated as entailing the penalty of death are practically but varieties of three offences only—murder, adultery, idolatry. To these must be added the case of an elder who taught contrary to the judgment of the Great Synhedrin of Jerusalem. Murder, the first of these and the most serious everywhere, is carefully discriminated in the Talmud. Under certain conditions only was it punished with death. To explain this fully we must ask the question, What constitutes murder according to the Hebrew penal code?

To constitute murder it was necessary to prove malice and intent. In the words of the Bible the criminal must have 'hated his

neighbour from heretofore ;' and as regards the commission of the offence, he must have 'lain in wait' for his victim in order to slay him. The malice and intent were to be actual and demonstrable. Neither of these essential conditions was to be presumed or inferred from the mere circumstance of an offence having been perpetrated. The English legal figment of constructive malice, like constructive murder, was undreamed of by the Hebrew legists. To convict capitally, as our criminal code can, a man who shoots at a fowl perched on a hedge, and accidentally kills some person hidden behind it, would have seemed to the rabbins an act of the grossest inhumanity. Only when the crime was assassination, deliberate and premeditated, was sentence of death pronounced.

Before proceeding further it is necessary to refer here to the remarkable enactment of the Talmud, known as the 'preliminary caution.' As already pointed out, this ordinance of the Mishnic doctors required that, in order

to secure a conviction in certain cases, proof had to be forthcoming that the witnesses had warned the accused prior to the commission of the offence with which he was charged, and informed him of the gravity of the crime he contemplated and the penalty attached to its perpetration. M. Rabbinowicz, as we before observed, regards this injunction of the rabbins as designed to abolish altogether the penalty of death. He thinks that in a case of assassination failure of evidence to prove that the culprit had received this 'preliminary warning' would constitute one of the extenuating circumstances which evitate capital punishment. We venture to think that M. Rabbinowicz misapprehends the real purpose and intent of this curious proviso.

In the first place, an important *beraitha* declares in the words of Jossé, the son of Judah, that the only object of this enactment was to prevent the condemnation of a person ignorant of the gravity of the offence he had committed. He adds that in the case of a

properly instructed man, proof of the 'preliminary caution' was not necessary in order to procure a conviction. Again, the Talmud emphatically declares that an acquittal contrary to an explicit injunction of the Pentateuch, or written law, had to be annulled. Now, the Mosaic code constantly assumes that every man is cognisant of the penal provisions of the Bible. The Talmud always acts upon this assumption; notably in the enactments respecting the contumacious elder. Every Jew is supposed to know what constitutes murder, and what is the penalty incurred thereby. The Pentateuch says nothing of any preliminary caution whatever. In a case of premeditated and wilful assassination, proved by witnesses in accordance with the rules of evidence, an acquittal grounded upon this provision of the rabbins only, would be manifestly opposed to the letter and spirit of the written law. Such a judgment would therefore, as the *beraitha* expressly states, be illegal and void. The

real object and intention of the preliminary warning will be presently indicated.

Ordinary cases of murder (*i.e.* not assassination under the circumstances above mentioned) were punished with imprisonment for life or perpetual seclusion. Here the absence of long-harboured malice, nourished enmity, and premeditated design constituted valid arguments against a capital conviction. Assassination, clearly proved, but not witnessed by persons qualified to give valid evidence, was also punishable in the same way. In every charge of murder (common homicide) it was indispensable to prove that the conduct or action of the culprit was the direct cause of death. The intent of the deed, the design of the prisoner at the moment of committing the crime to take away life, must be incontrovertibly demonstrable and clearly established. As a contributory, or as one among many others who slew a man, he could never be convicted of murder. For instance, a man and his neighbour quarrelled

and fought. The former threw his opponent into a ditch. There was a ladder in it at the time, by which any one could have got out. The man above walked away. Another passed by, and, seeing a ladder leading into the ditch, removed it. The person below could not escape, and perished in consequence. Under such circumstances, a charge of murder could not be maintained against the man who had thrown the deceased person into the *fosse* where he died. This leading case embodies the principle throughout adhered to by Hebrew legists. Constructive murder was unknown to the Jewish judges. This palpable absurdity still disfigures the pages of our English code. Five men are engaged, say, in the unlawful enterprise of robbing an orchard. The owner or one of his watchmen enters. A squabble ensues. One of the thieves throws a stone, which accidentally injures the owner or the watchman, who dies in consequence of the hurt received. The man who cast the missile and unintentionally

caused the mischief is perhaps known. Yet, despite this fact, the whole five could be found guilty of murder, and hanged! Such a conviction was impossible according to the Talmudic laws. If three, five, or any number of men attacked a single person and slew him, only the assailant whose hand actually inflicted death could be found guilty of murder. Where, on the other hand, the man who actually killed the victim could not be distinguished among the others, all of them were imprisoned for a fixed period, and could be compelled to support the family of the deceased person. The perpetual incarceration of a murderer had nothing in common with the modern systems of penal servitude. M. Rabbinowicz, with much discrimination, contrasts the seclusion of a convict as ordained by the Hebrew code for the protection of society and such systems of life-long incarceration as prevail in our own time. The mere deprivation of liberty was considered by the Rabbins the severest punishment a

human being could undergo. The penalty of murder is, in the characteristic phrase of the Talmud, that the murderer 'be put in prison ; and they give him the bread and water of misery.'

Adultery was, as stated, punishable with death. To secure a conviction, it was imperative that evidence be adduced conclusively showing that two witnesses had cautioned the accused of the gravity of the crime he or she was about to commit. In connection with this offence the primary and real intention of the preliminary warning insisted upon by the Talmud will be clearly understood. In other crimes men alone, as a rule, were the culprits. In adultery women would necessarily come prominently before the Synhedrin as the accused. Now, a vast amount of nonsense has been written regarding the position of females among the Hebrews. Argument ample and instance abounding have been produced to demonstrate the light esteem in which women were held by

the Jews. A deal of misdirected ingenuity has been applied to refuting these assertions. Like the *lex talionis*, the subject has never been properly explained. The Talmud is no orderly digest or methodised summary of laws such as moderns are accustomed to. It is a veritable garden of wild growths ; a luxuriant wilderness. Argument and dicta and enactment and proverb and legend are mixed and commingled in a harmonious confusion. It requires some amount of dexterity to pick one's way. Throughout this medley women are regarded from two points of view—the legal and the social. The references to women require, therefore, to be sorted and strung together in two separate series. As to the social position of women, a few quotations will suffice to show the high regard in which they were held. 'The verse in the Book of Job (v. 24), which says "thou shalt see prosperity in thy tents" refers,' explains the Talmud, 'to him who, loving his wife as himself, has more regard for her honour than

for his own !' The Rabbi Johanan says, 'he who has the misfortune to lose his wife, is as though he had witnessed the destruction of the Temple. For sacred writ does not disdain to figure in the death of Ezekiel's wife the overthrow of the holy edifice.' The learned Samuel, the son of Nahaman (who lost his first spouse when very young), declares 'that all things may be replaced ; but never the wife of one's youth.' Rabbi Eleazer adds : 'The altar itself weeps when a man divorces his wife.' These sayings will suffice to indicate that socially women were regarded with the highest respect and esteem. But legally their status was undeniably inferior to that of men. A woman was not in certain lawsuits permitted to give evidence. She was regarded as one uninstructed ; one unversed in the law. But mark how this worked. When a woman appeared before the Synhedrin, charged with adultery, she was presumably ignorant of the gravity of the offence she had committed, and unaware

of the penalty entailed thereby, unless evidence *to the contrary* was forthcoming. To condemn an untaught person was opposed to the principles of Talmudic laws. In order, therefore, to convict an adulteress it was indispensable, owing to her legal position, that competent witnesses should have warned her prior to the commission of the crime of its serious character and its punishment. Such testimony was not likely to be produced in these cases. Its absence declared the accused not responsible for the offence. The enactment of the 'preliminary caution' was therefore an argument in favour of the acquittal of a woman charged with any crime, notably with adultery. This may all seem very strange—perhaps not quite credible; but it is true, nevertheless.

Idolatry was considered the most heinous offence of which a Jew could be guilty. Among a people professing a monotheistic faith, hedged in by nations given to every form of paganism, prone to abominations of every

kind, it was thought necessary that any public desecration of religion should be severely punished. Every Jew was perfectly well acquainted with the grand principle of his creed, the *a'hidus hashem*—the unity of the godhead, and the spirituality of the Creator. Every Hebrew knew that idolatry in each and every form was an utter abomination in the sight of heaven. Hence in such cases ignorance could not be pleaded in extenuation of the crime; nor was any preliminary warning requisite in order that judgment of death might be legally pronounced. In ordinary affairs, as in the more serious matters capitally punishable, the Hebrew code did not permit of any sort of detective system. A man was not permitted to secrete himself in order to watch his neighbour. A witness who had acted in such a manner would not have been permitted to give evidence. When, however, a Jew was believed to have publicly devoted himself to idolatry, and to have endeavoured to seduce his neighbours

to the same practices, any ruse was permitted for the purpose of demonstrating his guilt. If, for example, he declared to one person only that in such and such a grove an image was erected, and attempted to persuade him to join in worship there, the latter was permitted to hide a friend wherever convenient, and calling the idolater, might say to him, 'Now tell me more about that image you worship.' If the backslider repeated his solicitations the testimony of the two witnesses was procured, which was necessary for condemnation. But previous to laying the matter before a Synhedrin it was imperative upon both these witnesses to reason with the idolater. They were, according to the Talmud, to speak kindly with him. They should address him and say: 'How! would you have us forsake our God who is in heaven to follow deities who are made of wood and stone?' If the erring brother gave ear to their exhortation and quitted his pagan practices, the witnesses who knew of his backsliding were

not permitted to mention the fact to any neighbours or friends. 'He who repents must never be reminded of his former iniquities.' But if obstinately bent on worshipping the image he had found and set up for himself, the depositions as to the circumstances were laid before the tribunal. These facts were, however, only sufficient to found an accusation upon. To convict it was necessary to prove that the offender was really given to the pagan practices to which he endeavoured to persuade his brethren. Similarly, in the case of a simple idolater it was requisite to prove more than mere adoration of an image or prostration before it, or dressing and tending it. It must be shown that he acknowledged it verbally as his divinity, and immolated sacrifices or offered incense in its honour. This was essential in order to constitute idolatry punishable with death.

The remaining capital offence—disobedience to the judgment of the great Synhedrin of Jerusalem—has been already referred to.

The penalty was necessary in this case, not solely on account of the mischief resulting from an elder or judge, having influence and authority, acting and inducing others to act contrary to tradition, but for another reason. It must be borne in mind that the Synhedrin at Jerusalem was the parliament of the nation, and disregard of its authority was, in point of fact, a political crime equivalent to high treason. An execution for such an offence could only take place in Jerusalem; and only during the celebration of one of the Shalosh Regalim—three great festivals of the year—when every male came up to the capital. By this arrangement the injunction of the Pentateuch was fulfilled (Deut. xvii. 13), and ‘All Israel heard.’

Two other punishments are prescribed by the Hebrew code: internment in a city of refuge, and flogging—the former for accidentally killing a neighbour; the latter for a large number of serious offences. These we shall now proceed to discuss.

CHAPTER IX.

CITIES OF REFUGE—THE PUNISHMENT FOR PERJURY— FLOGGING.

HOMICIDE by misadventure—that is, the accidental killing of a fellow-man—entailed upon the offender the penalty of internment in a city of refuge. The slaying of a neighbour by mischance was not, however, regarded as a crime properly so-called; nor does the Talmud consider the penalty thereby incurred in the light of a punishment. The Pentateuch, in common with all ancient legal systems, recognised the right of private vengeance in cases of murder and manslaughter. The family, relatives, and connections of the deceased could slay the culprit, wherever discovered. But most nations arranged the matter satisfactorily by a pecuniary payment. The Athenians, for example, placed the nego-

tiations for this purpose in the hands of the Ephetes. This was a progressive step. The Mosaic code went further. It abolished the blood-money altogether; but this left the offender at the mercy of those who were entitled to avenge the death. Recollecting probably his own misadventure with the Egyptian whom he accidentally slew, and his compulsory flight in consequence, Moses provided in his legislative scheme for the establishment of cities of refuge. To these the Hebrew who by mischance killed his neighbour was permitted to proceed. Here he was in safety—secure from the vengeance of the *Go'el hadam*, the 'redeemer of the blood.' The arrangement was, therefore, rather in the nature of a privilege than a punishment.

Internment in one of the cities of refuge was not the scampering process depicted in the popular engraving: a man in the last stage of exhaustion at the gate of an Eastern town; his pursuers close upon him, arrows fixed and bows drawn; his arms stretched imploringly

towards a fair Jewish damsel with pitcher gracefully poised upon her head. This may be extremely picturesque, but it is miserably unlike the custom in vogue among the later Hebrews. Internment in a city of refuge was a sober judicial proceeding. He who claimed the privilege was tried before the Synhedrin like any ordinary criminal. He was required to undergo examination; to confront witnesses; to produce evidence, precisely as in the case of other offenders. He had to prove that the homicide was purely accidental; that he had borne no malice against his neighbour; that he had not lain in wait for him to slay him. Only when the judges were convinced that the crime was homicide by misadventure was the culprit adjudged to be interned in one of the sheltering cities. There was no scurrying in the matter; no abrupt flight; no hot pursuit, and no appeal for shelter. As soon as judgment was pronounced the criminal was conducted to one of the appointed places. He was accompanied

the whole distance by two *talmidè-chachamin*—disciples of the rabbins. The avengers of the blood dared not interfere with the offender on the way. To slay him would have been murder, punishable with death. The cities of refuge were six in number—three on this side Jordan, three on the other. They were so situate as to be almost opposite each other. Hebron in Judah, over against Bezer in the Wilderness; Sechem in Ephraim, against Raamath Gilead; Kadesh Naphthali, against Golan. These places divided Palestine into four equal portions, being so arranged that the distances from the southern boundary to Hebron, from Hebron to Sechem, from Sechem to Kadesh, and from Kadesh to the northern frontier, were nearly identical. There were excellent roads from one to the other; at intervals signposts were erected indicating the way to the nearest city of refuge. Arrived at whichever of these he had selected, the conductors handed the offender into the charge of the Levites.

These allotted to him a dwelling place. He was in every respect free ; but not permitted to go beyond the boundaries of the territory pertaining to the town. Here he remained until the death of the high priest. Whenever this occurred he was at liberty to return to his home. The Hebrew who had the misfortune to slay accidentally a fellow man could likewise seek refuge, temporarily, in any one of the forty-two levitical cities of Palestine.

The Talmud distinguishes two kinds of accidental homicide—one where the death is due to the conduct or negligence of the accused only ; the other, where the deceased contributed thereto by some act of his own. For instance, a man is engaged building a house in a public street ; he is carrying a heavy stone on to the roof. This falls upon a neighbour passing below and kills him. The victim here is not to blame. In such a case the culprit would have been interned in a city of refuge. Again, a person is occupied

in repairing an edifice situated in a private court to which no one but the owner has the right of access. A stranger enters ; as he does so a stone falls and kills him. In a case like this the deceased was considered as having contributed to his own death ; and no punishment whatever followed. A father who chastised his son and undesignedly killed him ; a teacher who punished a pupil and unintentionally caused his death ; and the person who, by order of the Synhedrin, inflicted corporal punishment upon a culprit, which unfortunately terminated fatally—these likewise were not interned in a city of refuge. The reason of these three exceptions in the application of this law is self-evident. But in all other cases of homicide coming under the category before mentioned, where the victim was not a contributory to his own death, the penalty was enforced. A noteworthy exception is, however, found in the Talmud. There resided among the Jews a great number of so-called proselytes of the gate—strangers

who had in all essentials adopted the Hebrew faith. If one of these by misadventure killed an Israelite he was not conducted to any of the six cities, but was sent back to his native country. The motive here is sound and practical. The internment in a city of refuge lasted, as before said, until the demise of the high priest. If this sacred functionary was a younger man than the offender, the latter would probably have been exiled from home and family during the whole of his lifetime. Better, therefore, urged the Rabbins, that he return at once to his native land, safe from the pursuit of those entitled to exact vengeance for the crime he had by misadventure committed. And so in the case of a Hebrew accidentally killing a resident—a *gher thoshab*, as the rabbins term him—internment was considered unnecessary. There were no relatives in Palestine to avenge the death of the sojourner; no useful purpose could therefore be served by exiling the culprit from his home for a number of years. In the case of

a high priest dying after the condemnation of a criminal, but before he arrived at the city of refuge, the latter was free. If a new high priest had been elected before judgment was pronounced in a trial for homicide, the internment took place. If any person was so unfortunate as to kill accidentally the high priest, or if this functionary was himself the culprit, he was confined to one of the appointed towns during the whole of his lifetime. Those who were conducted to the cities of refuge for the inadvertent murder of a fellow-man entailed no expense upon the State or their friends. The mother of the high priest supplied these offenders with food and clothing, in order that they might not pray for the death of her son!

The punishment provided for perjurers by the Pentateuch is peculiar. Like another Mosaic ordinance it was probably suggested to the Hebrew legislator by the practice of the ancient Egyptians. A false witness was condemned to suffer whatever pains and

penalties a conviction would have entailed upon those whom he wrongfully accused. Theoretically this appears extremely simple ; its practical application was beset with difficulties. Nor is the language of the Bible sufficiently explicit in the case of sentence of death to render misinterpretation impossible. We have before indicated one case where a result of this injunction would prove a sheer absurdity, and the perjurer escape without any punishment whatever. Other instances are readily furnished. A man, for example, accuses another of accidental homicide ; the penalty of this offence is internment in a city of refuge. The testimony is proved to be false ; the witness perjured. Is he therefore to be conducted to a city of refuge ? An offender confined to one of these places was not undergoing a species of imprisonment. He was perfectly free. The only influence that induced—nay, compelled—him to remain was the dread of being slain by the avenger of blood. A false witness, if condemned to

this internment, would have no fear of any such consequences ; the punishment would be ridiculous. In such a case the perjurer would laugh at the sentence and practically escape scot free. Again, a man accuses one of his neighbours of stealing a sheep. The law in this case enjoined fivefold restitution. If the thief be unable to pay the amount he could be sold into servitude until the next jubilee in order to furnish the money. The prisoner in this case is found to be poor. The witness is proved to have committed perjury : the accused is set free. How was the individual guilty of a false oath to be punished in this instance ? He might fairly object to being sold ; the neighbour whom he sought to ruin might justly urge that a money penalty was by no means equivalent to the years of servitude he could have been compelled to endure had the charge against him been established. The judges would find themselves in a difficulty. Yet more complicated was the application of the Mosaic

ordinance where the sentence of death was incurred. A difficulty in the interpretation of the law occurred at the very outset. The Sadducees—who adhered to the letter of Scripture—urged that a perjurer could not be capitally condemned unless the person whom he falsely accused had already been executed. They based their arguments upon the Biblical formula, 'Life for life.' Against these the rabbinites produced the Mosaic injunction. This expressly declares that the false witness should be punished, as he had 'intended' that the accused should suffer. The Ghemara holds the law to be both impracticable and incomprehensible. It seems, however, on one occasion to have been carried into effect. The instance is recorded in the Talmud. Judah, the son of Tabai, condemned a perjurer to death; he was accordingly executed. The rabbin subsequently related the circumstance to Shimon, the son of Shatah. The latter thereupon asserted that innocent blood had been shed, and ex-

pounded the law to his colleague. From thenceforward the son of Tabai never pronounced a judgment in the absence of Shimon ben Shatah ; and every day as long as he lived he visited the cemetery and threw himself upon the grave of the witness whom he had condemned. To obviate any difficulties the Talmud prescribed for all cases of perjury one uniform punishment : stripes—that is, flogging.

According to the prescription of the Pentateuch an offender sentenced to be flogged was always punished in the presence of the Synhedrin that condemned him. The stripes, which might not exceed thirty-nine in number, were inflicted mercifully. A post was fixed in the earth ; to this the hands of the offender were tied. The hazan—door-keeper, attendant, messenger, and in modern times the reader of the community—performed the duty of executioner. The culprit was first stripped to the waist. Two qualified judges then examined him to determine

how many stripes he was strong enough to endure. If these experts disagreed in their estimate the smaller number was accepted. If they decided that the offender was capable of enduring the whole thirty-nine, and it was subsequently found that he was not sufficiently robust to do so, punishment ceased. If, on the other hand, they considered that, say, only eighteen stripes should be inflicted, and it was afterwards seen that the criminal could bear the full quota, no addition might be made to the original estimate. In all cases the number fixed must be divisible into three even portions ; that is, if the judges decided the offender could bear twenty stripes, they must only award eighteen ; if eight, only six. The handle of the whip was four fingers' breadth long ; the thong of the same breadth and long enough to cross the body. One of the judges gave the word ' strike,' as the signal for each stripe ; another kept reckoning of the number : a third read three portions of Scripture aloud during the

punishment; the concluding verse being from the Psalms (lxxviii. 38): 'But He, being merciful, forgiveth iniquity.' If at any time during the flogging involuntary signs of weakness were observed the culprit was at once released. If he succeeded in freeing himself from the post or managed to escape, the punishment could not again be inflicted. If the whip broke during the flogging, it was not permitted to repair the lash and continue the stripes. In the Talmud stripes are prescribed as the penalty of nearly all ordinary offences of which the criminal code in those times took cognisance. Adultery, immorality, sacrilege, and public desecration of the Mosaic ceremonial laws were all in the later period of Jewish nationality punishable in this manner. Practically though, flogging seems to have been confined to perjury.

CHAPTER X.

MISCELLANEOUS LAWS—CONCLUSION.

THE Hebrew Penal Code necessarily includes a number of miscellaneous enactments not reducible under general headings. Many of these are interesting. The Talmud, for example, recognises justifiable homicide. Under certain circumstances it was permissible to kill a would-be criminal, in order to prevent the commission of either murder or adultery—as the Ghemara puts it, ‘to save an innocent man’s life or a woman’s honour.’ In self-defence; likewise to protect one’s person or property against footpads or burglars it was of course allowable to take away life. Any offence perpetrated under compulsion or in mortal fear was excusable in the eyes of the law—excepting only murder and adultery.

If a man was threatened with death unless he consented to assassinate a neighbour, he was directed rather to die than slay an innocent person. Similarly, the Talmud enjoins every man to prefer death to dishonouring under compulsion an innocent woman. In times of religious persecution it was forbidden to violate in public the ordinances of the Bible. But the conditions constituting such violation were clearly discriminated. A man might attend to an idol, he might wash and anoint it, bring wood and lights to pagan temples ; but if ordered under penalty of death to publicly acknowledge an image as his God he was bound to refuse. If a pagan commanded a Jew to cut grass for his horse on a Sabbath day he might do so ; but if ordered to cut the fodder and throw it into the river (*i.e.* needlessly to desecrate his faith) he was not permitted to comply.

Another injunction of the Mosaic Code—copied from the laws of the Egyptians—required a man to risk even his life when

he saw a fellow-man in danger, under the penalty of flogging. (The Egyptians punished the omission with stripes or three days' imprisonment without food.) Stealing a fellow-Jew and selling him was, as we have already said, a capital crime. Stealing and concealing a man entailed upon the offender public flogging. An elder or judge who simply taught in contravention of the traditions of the Great Synhedrin of Jerusalem was not condemned to death unless he rendered decisions in accordance with his heterodox views and saw his judgments carried into effect. A criminal three times convicted and punished for an offence—adultery, paganism, perjury, &c.—entailing flogging, was imprisoned for life. An offender who succeeded in escaping when led to execution was not reconducted, when captured, to the tribunal by which he was tried and condemned. Two witnesses deposed to the fact of his conviction before the nearest Synhedrin, and the sentence was thereupon

carried out. A person tried for two crimes, each entailing a different kind of death, and convicted of both, was punished with the least painful of the two modes of execution. Two persons charged with a capital offence would not be heard and judged on the same day; not even if paramours in adultery. Confiscation of property was unknown to the Hebrew law, a malefactor's possessions always descending to the natural heritors. Double punishment—*bis in idem*—such as the payment of a pecuniary penalty in addition to flogging, was not permissible, except in the one instance where the infliction of both is specially prescribed in the Pentateuch.

The survey, necessarily brief and imperfect, here completed of the Criminal Laws of the Talmud, will enable even those who 'run and read' to form some idea of the Hebrew Penal Code and the practical mode of administering justice as it prevailed among the Israelites of old. The simplicity of the organisation, the mildness of the punish-

ments, and the humanity throughout apparent, may be left to speak for themselves. Before quitting the subject, a few words on the character of the men who framed and interpreted these enactments may not be amiss.

The favourite accusation hurled at the heads of the rabbins (apart from the epithets 'prejudiced' and 'narrow-minded') is that they adhered to the letter of the law; they did not inquire into the motives, into the spirit of its injunctions. Nothing can be more untrue; nothing more opposed to actual fact. He who would have proof of this need but read a single page of the Talmud, or have it read to him by some competent scholar. The adherence to the letter of the Pentateuch, which is always recommended by the traditional school, has a reason sound and practical. This is indicated in one of the most interesting bits of argument contained in the Treatise Synhedrin.

Only one injunction in the Five Books of

Moses is distinctly supplied with motive : the King is commanded not to take unto him a number of wives, in order that he may not be corrupted and led away to idolatry. Here the reason of the precept is distinctly given. The spirit, the essence of the enactment is that the Sovereign be not seduced to paganism. The Talmud points out that the indication of the motive in this instance is calculated to produce the very contrary effect to that intended. For the following reason :— ‘ A good man reading it will say, as King Solomon did, The object of this command is to preserve me from idolatry ; surely I need not fear being seduced to the worship of strange deities. I am not afraid of violating the spirit of the law ; therefore I need not adhere to the letter of the precept, provided I bear in mind its purport. Yet the very self-confidence engendered by regarding the motive only caused the fall of the wisest of men. For he took him many wives and they did corrupt him.’ The argument of the

rabbins in reference to this precept shows a sound knowledge of human nature and its peculiar weaknesses.

As regards the narrow prejudices of the rabbins, it may be worth while again to call attention to the charge addressed to witnesses when about to give evidence, cautioning them against supposing that a Jew was superior to the men of other nations. Time after time the Talmud emphatically declares anent proselytism that it is not necessary to become a Hebrew in order to participate in a future existence. The Mishna, moreover, narrates how on the Day of Atonement, the most sacred and solemn fast of the year, when the Israelites sought pardon for their transgressions, seventy additional sacrifices were offered in the Temple to procure remission for the iniquities committed by the seventy nations then supposed to exist.

In the practical regulations of every-day life the same liberality is apparent. A pagan living among the Jews was not permitted to

keep the seventh day as a Sabbath if he rested upon another day in accordance with the custom of his own people. 'No man must be idle two days,' remarks the Talmud, 'in each week.' A pagan who blasphemed the Almighty was not punished; 'for,' say the rabbins, 'he does not believe in our God.' These are somewhat unusual modes of manifesting narrow-mindedness and prejudice and bigotry.

Of the criminal code formulated by these rabbins it may fairly be said, in the words of an old Chinese adage, that 'the pen of the law fears the thunder of Heaven.' Nothing, perhaps, can be more characteristic of the spirit of the Hebrew penal system, of its treatment of offenders, and of its modes of punishment than the graceful saying attributed in the Talmud to Berurah, wife of the pious Rabbi Meier and daughter of the no less renowned Chanina ben T'radyon. The Rabbi Meier was plagued with some extremely wicked neighbours. Angered at

their discreditable conduct, he cursed them. His gentle wife heard him. 'Nay, my husband,' she said, addressing him, 'cease thou; call rather upon the Almighty to turn thine neighbours from their evil ways, that they die not. How says the sweet Psalmist of Israel? We do not find, "Let sinners perish from off the earth," but "sins;" for if sin be destroyed and iniquity be blotted out, the earth will no longer be contaminated by sinners.' In this spirit the Hebrew criminal laws were conceived, and in this spirit were they interpreted and administered.